

## PRIVATE EDUCATION TAX CREDITS REFERENDUM

### Object Statement

The object of this Petition is to...

Repeal LB 753, passed by the 108<sup>th</sup> Nebraska Legislature in 2023, which (1) authorizes certain nonprofit organizations to provide scholarships to eligible students to attend a qualified private elementary or secondary school, and (2) provides individuals and corporations tax credits for financial contributions to these organizations.





## LEGISLATIVE BILL 753

Approved by the Governor May 30, 2023

Introduced by Linehan, 39; Aguilar, 35; Albrecht, 17; Armendariz, 18; Ballard, 21; Brewer, 43; Briesse, 41; Clements, 2; DeKay, 40; Dover, 19; Erdman, 47; Geist, 25; Halloran, 33; Hansen, B., 16; Hardin, 48; Holdcroft, 36; Hughes, 24; Ibach, 44; Jacobson, 42; Kauth, 31; Lippincott, 34; Lowe, 37; McDonnell, 5; McKinney, 11; Moser, 22; Murman, 38; Riepe, 12; Sanders, 45; Slama, 1; von Gillern, 4; Wayne, 13; Bosn, 25; at the request of the Governor.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes Cumulative Supplement, 2022; to adopt the Opportunity Scholarships Act; to provide for tax credits; to harmonize provisions; to provide an operative date; to provide for severability; and to repeal the original sections.  
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 13 of this act shall be known and may be cited as the Opportunity Scholarships Act.

Sec. 2. The Legislature finds that:

(1) Enabling the greatest number of parents and legal guardians to choose among quality educational opportunities for children will improve the quality of education available to all children;

(2) Privately operated elementary and secondary schools in Nebraska satisfy the state's requirements for legal operation and provide quality educational opportunities for children;

(3) Parents and legal guardians of limited means are less able to choose among quality educational opportunities for their children;

(4) Making it possible for more parents and legal guardians to be able to choose privately operated schools benefits Nebraska parents and taxpayers; and

(5) It is in the best interests of the State of Nebraska and its citizens to encourage individuals and businesses to support organizations that financially assist parents and legal guardians who want to enroll their children in privately operated elementary and secondary schools, and such encouragement can be accomplished through the use of tax credits.

Sec. 3. For purposes of the Opportunity Scholarships Act:

(1) Department means the Department of Revenue;

(2) Education scholarship means a financial grant-in-aid to be used to pay all or part of the tuition and fees for attending a qualified school and includes any tuition grants;

(3) Eligible student means a resident of Nebraska who:

(a) Is receiving an education scholarship for the first time and is (i) entering kindergarten or ninth grade in a qualified school or (ii) transferring from a public school at which the student was enrolled for at least one semester immediately preceding the first semester for which the student receives an education scholarship to a qualified school and is entering any of grades kindergarten through twelve;

(b) Has previously received an education scholarship and is continuing education at a qualified school until such student graduates from high school or reaches twenty-one years of age, whichever comes first; or

(c) Is the sibling of a student who is receiving an education scholarship and resides in the same household as such student;

(4) Qualified school means any nongovernmental, privately operated elementary or secondary school located in this state that (a) is operated not for profit, (b) complies with the antidiscrimination provisions of 42 U.S.C. 1981 as such section existed on January 1, 2023, (c) complies with all health and life safety laws or codes that apply to privately operated schools, and (d) fulfills the applicable accreditation or approval requirements established by the State Board of Education pursuant to section 79-318;

(5) Scholarship-granting organization means a charitable organization in this state that is (a) exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and (b) certified pursuant to section 4 of this act to provide tax-credit-supported education scholarships to eligible students to assist them in attending qualified schools; and

(6) Tuition means any amount charged by a qualified school for enrollment in its instructional program. Tuition shall not exceed the full cost of educating an eligible student at such qualified school.

Sec. 4. (1) An organization may apply to the department to become certified as a scholarship-granting organization under the Opportunity Scholarships Act. An organization shall obtain such certification prior to providing any education scholarships to eligible students under the act. The applicant shall provide the department with sufficient information to show:

(a) That the applicant is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(b) That the applicant will offer one or more education scholarship programs for eligible students;

(c) That the applicant will be able to comply with the requirements of section 10 of this act;

(d) That the applicant will provide education scholarships for eligible students without limiting education scholarship availability to only one qualified school;

(e) That the applicant will:

(i) Give first priority to:

(A) Eligible students who received an education scholarship from a scholarship-granting organization during the previous school year; and

(B) The sibling of a student who is receiving an education scholarship, so long as the sibling resides in the same household as such student;

(ii) Give second priority to:

(A) Eligible students whose household income levels do not exceed one hundred percent of the federal poverty level;

(B) Eligible students whose application for the enrollment option program established in section 79-234 has been denied;

(C) Eligible students who have an individualized education plan;

(D) Eligible students who are experiencing bullying, harassment, hazing, assault, battery, kidnapping, robbery, sexual offenses, threat or intimidation, or fighting at school;

(E) Eligible students who are in foster care; and

(F) Eligible students who are in a family with a parent or guardian actively serving in a branch of the armed forces of the United States or in the National Guard, or whose parent or guardian was killed serving in the line of duty;

(iii) Give third priority to eligible students whose household income levels exceed one hundred percent of the federal poverty level but do not exceed one hundred eighty-five percent of the federal poverty level;

(iv) Give fourth priority to eligible students whose household income levels exceed one hundred eighty-five percent of the federal poverty level but do not exceed two hundred thirteen percent of the federal poverty level; and

(v) Give fifth priority to eligible students whose household income levels exceed two hundred thirteen percent of the federal poverty level but do not exceed three hundred percent of the income indicated in the income eligibility guidelines for reduced price meals under the National School Lunch Program in 7 C.F.R. part 210;

(f) That the applicant will limit the maximum scholarship amount awarded to any student to the cost of tuition and fees at the qualified school such student attends; and

(g) That the applicant will limit scholarship amounts awarded to students in a manner that assures that the average of the scholarship amounts awarded per student does not exceed seventy-five percent of the statewide average general fund operating expenditures per formula student for the most recently available complete data year as such terms are defined in section 79-1003.

(2) If the applicant meets the requirements of this section, the department shall certify it as a scholarship-granting organization for tax-credit purposes under the Opportunity Scholarships Act. Such certification is subject to revocation by the department if the scholarship-granting organization subsequently fails to fulfill the requirements of this section or section 10 of this act.

Sec. 5. (1) An individual taxpayer who makes one or more cash contributions to one or more scholarship-granting organizations during a tax year shall be eligible for a credit against the income tax due under the Nebraska Revenue Act of 1967. Except as otherwise provided in the Opportunity Scholarships Act, the amount of the credit shall be equal to whichever of the following amounts is the lowest: (a) The total amount of such contributions made during the tax year; (b) fifty percent of the income tax liability of such taxpayer for the tax year; or (c) one hundred thousand dollars. A taxpayer may only claim a credit pursuant to this section for the portion of the contribution that was not claimed as a charitable contribution under the Internal Revenue Code.

(2) Taxpayers who are married but file separate returns for a tax year in which they could have filed a joint return may each claim only one-half of the tax credit that would otherwise have been allowed for a joint return.

(3) The tax credit allowed under this section shall be a nonrefundable credit. Any amount of the credit that is unused may be carried forward and applied against the taxpayer's income tax liability for the next five years immediately following the tax year in which the credit is first allowed. The tax credit cannot be carried back.

(4) The taxpayer may not designate all or any part of the contribution to a scholarship-granting organization for the benefit of any eligible student specifically identified by the taxpayer.

(5) The tax credit allowed under this section is subject to section 9 of this act.

Sec. 6. (1) Any partnership, limited liability company, or corporation having an election in effect under subchapter S of the Internal Revenue Code of 1986, as amended, that is carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code of 1986, as amended, or is carrying on any rental activity and that makes one or more cash contributions to one or more scholarship-granting organizations during a tax year shall be eligible for a credit against the income tax due under the Nebraska Revenue Act of 1967. Except as otherwise provided in the Opportunity Scholarships Act, the amount of the credit shall be equal to

whichever of the following amounts is the lowest: (a) The total amount of such contributions made during the tax year; (b) fifty percent of the income tax liability of such taxpayer for the tax year; or (c) one hundred thousand dollars. A taxpayer may only claim a credit pursuant to this section for the portion of the contribution that was not claimed as a charitable contribution under the Internal Revenue Code. The credit shall be attributed to each partner, member, or shareholder in the same proportion used to report the partnership's, limited liability company's, or subchapter S corporation's income or loss for income tax purposes.

(2) The tax credit allowed under this section shall be a nonrefundable credit. Any amount of the tax credit that is unused may be carried forward and applied against the taxpayer's income tax liability for the next five years immediately following the tax year in which the credit is first allowed. The tax credit cannot be carried back.

(3) The taxpayer may not designate all or any part of the contribution to a scholarship-granting organization for the benefit of any eligible student specifically identified by the taxpayer.

(4) The tax credit allowed under this section is subject to section 9 of this act.

Sec. 7. (1) An estate or trust which makes one or more cash contributions to one or more scholarship-granting organizations during a tax year shall be eligible for a credit against the income tax due under the Nebraska Revenue Act of 1967. Except as otherwise provided in the Opportunity Scholarships Act, the amount of the credit shall be equal to whichever of the following amounts is the lowest: (a) The total amount of such contributions made during the tax year; (b) fifty percent of the income tax liability of such taxpayer for the tax year; or (c) one million dollars. A taxpayer may only claim a credit pursuant to this section for the portion of the contribution that was not claimed as a charitable contribution under the Internal Revenue Code. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for income tax purposes.

(2) The tax credit allowed under this section shall be a nonrefundable credit. Any amount of the tax credit that is unused may be carried forward and applied against the taxpayer's income tax liability for the next five years immediately following the tax year in which the credit is first allowed. The tax credit cannot be carried back.

(3) The taxpayer may not designate all or any part of the contribution to a scholarship-granting organization for the benefit of any eligible student specifically identified by the taxpayer.

(4) The tax credit allowed under this section is subject to section 9 of this act.

Sec. 8. (1) A corporate taxpayer as defined in section 77-2734.04 which makes one or more cash contributions to one or more scholarship-granting organizations during a tax year shall be eligible for a credit against the income tax due under the Nebraska Revenue Act of 1967. Except as otherwise provided in the Opportunity Scholarships Act, the amount of the credit shall be equal to whichever of the following amounts is the lowest: (a) The total amount of such contributions made during the tax year; (b) fifty percent of the income tax liability of such taxpayer for the tax year; or (c) one hundred thousand dollars. A taxpayer may only claim a credit pursuant to this section for the portion of the contribution that was not claimed as a charitable contribution under the Internal Revenue Code.

(2) The tax credit allowed under this section shall be a nonrefundable credit. Any amount of the tax credit that is unused may be carried forward and applied against the taxpayer's income tax liability for the next five years immediately following the tax year in which the credit is first allowed. The tax credit cannot be carried back.

(3) The taxpayer may not designate all or any part of the contribution to a scholarship-granting organization for the benefit of any eligible student specifically identified by the taxpayer.

(4) The tax credit allowed under this section is subject to section 9 of this act.

Sec. 9. (1) Prior to making a contribution to a scholarship-granting organization, any taxpayer desiring to claim a tax credit under the Opportunity Scholarships Act shall notify the scholarship-granting organization of the taxpayer's intent to make a contribution and the amount to be claimed as a tax credit. Upon receiving each such notification, the scholarship-granting organization shall notify the department of the intended tax credit amount. If the department determines that the intended tax credit amount in the notification would exceed the limit specified in subsection (3) of this section, the department shall notify the scholarship-granting organization of its determination within thirty days after receipt of the notification. The scholarship-granting organization shall then promptly notify the taxpayer of the department's determination that the intended tax credit amount in the notification is not available. If an amount less than the amount indicated in the notification is available for a tax credit, the department shall notify the scholarship-granting organization of the available amount and the scholarship-granting organization shall notify the taxpayer of the available amount within three business days.

(2) In order to be allowed a tax credit as provided by the act, the taxpayer shall make its contribution between thirty-one and sixty days after notifying the scholarship-granting organization of the taxpayer's intent to



make a contribution. If the scholarship-granting organization does not receive the contribution within the required time period, it shall notify the department of such fact and the department shall no longer include such amount when calculating whether the limit prescribed in subsection (3) of this section has been exceeded. If the scholarship-granting organization receives the contribution within the required time period, it shall provide the taxpayer with a receipt for the contribution. The receipt shall show the name and address of the scholarship-granting organization, the date the scholarship-granting organization was certified by the department in accordance with section 4 of this act, the name, address, and, if available, tax identification number of the taxpayer making the contribution, the amount of the contribution, and the date the contribution was received.

(3) The department shall consider notifications regarding intended tax credit amounts in the order in which they are received to ascertain whether the intended tax credit amounts are within the annual limit provided in this subsection. The annual limit on the total amount of tax credits for calendar years 2024, 2025, and 2026 shall be twenty-five million dollars. The annual limit on the total amount of tax credits for calendar year 2027 and each calendar year thereafter shall be calculated by taking the annual limit from the prior calendar year and then multiplying such amount by (a) one hundred twenty-five percent if the intended tax credit amounts in the prior calendar year exceeded ninety percent of the annual limit applicable to that calendar year or (b) one hundred percent if the intended tax credit amounts in the prior calendar year did not exceed ninety percent of the annual limit applicable to that calendar year. The annual limit may be increased as provided in this subsection until it reaches one hundred million dollars. Thereafter, no further increases shall be allowed.

(4) The State Department of Education and the Department of Revenue shall publish on their respective websites information identifying the annual limit when it is increased pursuant to subsection (3) of this section.

(5) Once credits have reached the designated annual limit for any calendar year, no additional credits shall be allowed for such calendar year. Credits shall be prorated among the notifications received on the day the annual limit is exceeded.

Sec. 10. (1) For purposes of this section:

(a) Net revenue means the total amount of revenue received by a scholarship-granting organization during a state fiscal year minus the amount of such revenue that is used or reserved for the administrative costs of such organization for the same state fiscal year;

(b) Revenue means all grants, donations, and contributions received by a scholarship-granting organization for the purpose of providing education scholarships; and

(c) State fiscal year means the period of time commencing on July 1 and ending on June 30 of the following year.

(2) In order for a scholarship-granting organization to remain certified under the Opportunity Scholarships Act, the scholarship-granting organization shall allocate its revenue as follows:

(a) If the annual limit on tax credits under section 9 of this act is less than thirty-five million dollars, the scholarship-granting organization shall allocate at least ninety percent of its revenue for education scholarships and no more than ten percent of its revenue shall be used or reserved for administrative costs; or

(b) If the annual limit on tax credits under section 9 of this act is thirty-five million dollars or more, the scholarship-granting organization shall allocate at least ninety-five percent of its revenue for education scholarships, and no more than five percent of its revenue shall be used or reserved for administrative costs.

(3) For purposes of subsection (2) of this section, revenue is allocated when it is expended or otherwise irrevocably encumbered for expenditure. The percentage of revenue allocated for education scholarships shall be measured as a monthly average over the most recent twenty-four-month period or, for a scholarship-granting organization that has been certified for less than twenty-four months, over the period of time that the scholarship-granting organization has been certified.

(4) Beginning January 1, 2028:

(a) A scholarship-granting organization shall carry forward no more than twenty-five percent of its net revenue from one state fiscal year to the following state fiscal year. Any amount carried forward shall be expended for annual or partial-year education scholarships in the following state fiscal year; and

(b) Any amount of net revenue remaining on June 30 of any state fiscal year that is in excess of the amount that may be carried forward under subdivision (a) of this subsection shall be used to provide education scholarships to eligible students or transferred to one or more other scholarship-granting organizations to provide education scholarships to eligible students by no later than the following September 30. Any amount of such net revenue that is not used or transferred by the following September 30 shall be remitted to the State Treasurer for credit to the General Fund. Any scholarship-granting organization receiving a transfer pursuant to this subdivision shall place the transferred funds into its scholarship account and shall separately disclose the transfer in its annual financial audit.

Sec. 11. (1) Each scholarship-granting organization shall annually submit to the department no later than December 1 of each year an audited financial

information report for its most recent fiscal year certified by an independent public accountant.

(2) Each scholarship-granting organization shall include with the report submitted under subsection (1) of this section a summary description of (a) its policies and procedures for awarding education scholarships, (b) the number of eligible students receiving education scholarships in the most recent fiscal year, (c) the total amount of contributions received for education scholarships in the most recent fiscal year, and (d) the total amount of education scholarships awarded in the most recent fiscal year.

(3) The department shall electronically forward such reports and summary descriptions to the Governor and the Legislature no later than December 31 of each year.

(4) By June 30, 2027, and by June 30 of each odd-numbered year thereafter, the department shall electronically submit a report to the chairperson of the Appropriations Committee of the Legislature, the chairperson of the Education Committee of the Legislature, and the chairperson of the Revenue Committee of the Legislature. The report shall include, but not be limited to, the following:

(a) A review of the progress of the Opportunity Scholarships Act;

(b) The number of students currently wait-listed or denied from receiving an education scholarship and the reason for the wait-listing or denial;

(c) The dollar amount of education scholarships given by scholarship-granting organizations; and

(d) The demographic information of students receiving education scholarships, including, but not limited to:

(i) Income level;

(ii) Grade level; and

(iii) Geographic location.

Sec. 12. The Opportunity Scholarships Act shall not be construed as granting any expanded or additional authority to the State of Nebraska to control or influence the governance or policies of any qualified school due to the fact that the qualified school admits and enrolls students who receive education scholarships or as requiring any such qualified school to admit or, once admitted, to continue the enrollment of any student receiving an education scholarship.

Sec. 13. The department may adopt and promulgate rules and regulations to carry out the Opportunity Scholarships Act.

Sec. 14. Section 77-2715.07, Revised Statutes Cumulative Supplement, 2022, is amended to read:

77-2715.07 (1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such nonrefundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, or the Volunteer Emergency Responders Incentive Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended, except that for taxable years beginning or deemed to begin on or after January 1, 2015,

such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 32 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income;

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236;

(d) A credit as provided in the New Markets Job Growth Investment Act;

(e) A credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act;

(f) A credit to employers as provided in sections 77-27,238 and 77-27,240; and

(g) A credit as provided in the Affordable Housing Tax Credit Act; and -

(h) A credit as provided in the Opportunity Scholarships Act.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (6) of section 77-5211.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

(6) There shall be allowed to all individuals nonrefundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in section 77-3604 and refundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in section 77-3605.

(7)(a) For taxable years beginning or deemed to begin on or after January 1, 2020, and before January 1, 2026, under the Internal Revenue Code of 1986, as amended, a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 in the amount of five thousand dollars shall be allowed to any individual who purchases a residence during the taxable year if such residence:

(i) Is located within an area that has been declared an extremely blighted area under section 18-2101.02;

(ii) Is the individual's primary residence; and

(iii) Was not purchased from a family member of the individual or a family member of the individual's spouse.

(b) The credit provided in this subsection shall be claimed for the taxable year in which the residence is purchased. If the individual cannot fully utilize the credit for such year, the credit may be carried forward to subsequent taxable years until fully utilized.

(c) No more than one credit may be claimed under this subsection with respect to a single residence.

(d) The credit provided in this subsection shall be subject to recapture by the Department of Revenue if the individual claiming the credit sells or otherwise transfers the residence or quits using the residence as his or her primary residence within five years after the end of the taxable year in which the credit was claimed.

(e) For purposes of this subsection, family member means an individual's spouse, child, parent, brother, sister, grandchild, or grandparent, whether by blood, marriage, or adoption.

(8) There shall be allowed to all individuals refundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act.

(9)(a) For taxable years beginning or deemed to begin on or after January 1, 2022, under the Internal Revenue Code of 1986, as amended, a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 shall be allowed to the parent of a stillborn child if:

(i) A fetal death certificate is filed pursuant to subsection (1) of section 71-606 for such child;

(ii) Such child had advanced to at least the twentieth week of gestation; and

(iii) Such child would have been a dependent of the individual claiming the credit.

(b) The amount of the credit shall be two thousand dollars.

(c) The credit shall be allowed for the taxable year in which the stillbirth occurred.

Sec. 15. Section 77-2717, Revised Statutes Cumulative Supplement, 2022, is amended to read:

77-2717 (1)(a)(i) For taxable years beginning or deemed to begin before January 1, 2014, the tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (A) substituting Nebraska taxable income for federal taxable income, (B) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (C) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the New Markets Job Growth Investment Act.

(ii) For taxable years beginning or deemed to begin on or after January 1, 2014, the tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by substituting Nebraska taxable income for federal taxable income and applying Nebraska rates to the result. The credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Opportunity Scholarships Act, and sections 77-27,238 and 77-27,240.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska



Advantage Research and Development Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act. A nonrefundable income tax credit shall be allowed for all nonresident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Opportunity Scholarships Act, and sections 77-27,238 and 77-27,240.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, the Renewable Chemical Production Tax Credit Act, the Opportunity Scholarships Act, and sections 77-27,238 and 77-27,240. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, the Renewable Chemical Production Tax Credit Act, the Opportunity Scholarships Act, and sections 77-27,238 and 77-27,240 and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. For taxable years beginning or deemed to begin before January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. For taxable years beginning or deemed to begin on or after January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

(6) The Tax Commissioner may allow a nonresident beneficiary to not file a Nebraska income tax return if the nonresident beneficiary's only source of Nebraska income was his or her share of the estate's or trust's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the estate or trust has remitted the amount required by subsection (5) of this section on behalf of such nonresident beneficiary. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident beneficiary.

(7) For purposes of this section, unless the context otherwise requires, simple trust shall mean any trust instrument which (a) requires that all income shall be distributed currently to the beneficiaries, (b) does not allow amounts to be paid, permanently set aside, or used in the tax year for charitable purposes, and (c) does not distribute amounts allocated in the corpus of the trust. Any trust which does not qualify as a simple trust shall be deemed a complex trust.

(8) For purposes of this section, any beneficiary of an estate or trust

that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the beneficiary.

Sec. 16. Section 77-2734.03, Revised Statutes Cumulative Supplement, 2022, is amended to read:

77-2734.03 (1)(a) For taxable years commencing prior to January 1, 1997, any (i) insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, (ii) electric cooperative organized under the Joint Public Power Authority Act, or (iii) credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as taxes on such premiums and assessments and taxes in lieu of intangible tax.

(b) For taxable years commencing on or after January 1, 1997, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, any electric cooperative organized under the Joint Public Power Authority Act, or any credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as (i) taxes on such premiums and assessments included as Nebraska premiums and assessments under section 77-2734.05 and (ii) taxes in lieu of intangible tax.

(c) For taxable years commencing or deemed to commence prior to, on, or after January 1, 1998, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523 shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as assessments allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

(2) There shall be allowed to corporate taxpayers a tax credit for contributions to community betterment programs as provided in the Community Development Assistance Act.

(3) There shall be allowed to corporate taxpayers a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended.

(5) There shall be allowed to corporate taxpayers refundable income tax credits under the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act.

(6) There shall be allowed to corporate taxpayers a nonrefundable income tax credit for investment in a biodiesel facility as provided in section 77-27,236.

(7) There shall be allowed to corporate taxpayers a nonrefundable income tax credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Opportunity Scholarships Act, and sections 77-27,238 and 77-27,240.

Sec. 17. This act becomes operative for all taxable years beginning or deemed to begin on or after January 1, 2024, under the Internal Revenue Code of 1986, as amended.

Sec. 18. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 19. Original sections 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes Cumulative Supplement, 2022, are repealed.